

## FIRST DIVISION

[ G.R. No. 128514 & G.R. 143856-61, October 03, 2001 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO LEONES, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

While it is true that this Court is the court of last resort, there are allegations of error committed by a lower court which we ought not to look into to uphold the right of the accused. Such is the case in an appeal by the prosecution seeking to increase the penalty imposed upon the accused for this runs afoul of the right of the accused against double jeopardy.

The accused Nilo Leones was charged and convicted by the trial court of three (3) counts of rape and three (3) counts of acts of lasciviousness. The dispositive portion of the trial court decision rendered on February 19, 1997 reads, *viz*:

"WHEREFORE, this Court finds the accused NILO LEONES guilty as charged. He is hereby sentenced to suffer the penalty of THREE (3) TWENTY (20) YEARS and ONE (1) DAY of reclusion perpetua for the three counts of rape, and THREE (3) indeterminate sentences of FIVE (5) YEARS minimum to SIX (6) YEARS maximum for the three counts of acts of lasciviousness, which he shall serve simultaneously. Further, he is hereby ordered to pay the victim the amount of Fifty Thousand Pesos (P50,000.00) representing moral damages, and one-half of the costs."<sup>[1]</sup>

The accused did not appeal the above decision, but the prosecution filed a notice of appeal on February 25, 1997.<sup>[2]</sup> The accused started to serve sentence on March 11, 1997.<sup>[3]</sup>

In its Appellant's Brief, the prosecution alleges that the penalties for the three counts of rape imposed upon the accused are not in accord with R.A. No. 7659<sup>[4]</sup> and should each be increased to death; while the penalties meted out for the three counts of acts of lasciviousness are erroneous pursuant to R.A. No. 7610<sup>[5]</sup> and should each be increased to "12 years and 1 day of *reclusion temporal* minimum, as minimum, to 17 years and 4 months of *reclusion temporal* medium, as maximum."<sup>[6]</sup>

Section 1, Rule 122 of the Revised Rules of Criminal Procedure provides: